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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Patent Application of John P. Blasko et al

Conf. No.: 6850 : Group Art Unit: 3622
Appln. No.: 09/742,527 : Examiner: Yehdega Retta
Filing Date: 21 DECEMBER 2000 : Attorney Docket No.: T721-14
Title: System and method for automatically managing avail inventory data and avail pricing

Request for Pre-Appeal Brief Conference

Applicant(s) request(s) review of the final rejection in the above-identified application, under the Pre-Appeal Brief Conference Program published on July 12, 2005. No amendments are being filed with this request.

- ☒ The review is requested for the reason(s) stated on the attached sheet(s).
☒ Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences is filed herewith.

Date:

8/31/07

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STATEMENT IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Presently, claims 1-21 and 85-113 are pending in the application. This paper is being filed in support of the Request for Pre-Appeal Brief Conference submitted herewith. Details of the Examiner's rejections may be found in the Final Office Action dated May 3, 2007 ("Final Office Action") and the Examiner's Advisory Action dated August 17, 2007 ("Advisory Action"). Discussion of the prior art references and the pending claims may be found in Applicant's Amendment filed February 5, 2007 ("Amendment") and Applicant's Response After Final Rejection filed July 26, 2007 ("Response After Final"), both of which are incorporated herein by reference.

Even though the Examiner has not established that Hendricks teaches all aspects of the claimed invention, the Examiner has not withdrawn the rejection of claims 1-4, 6-13, 16-21, 27 and 85-112 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,463,585 to Hendricks *et al.* ("Hendricks"). A summary of relevant portions of Hendricks may be found at pages 14-17 of Applicant's Response After Final.

Applicants have established that Hendricks does not disclose all elements of the Applicant's claims (Response After Final, page 14). In particular, Hendricks does not disclose "correlating available addressable units of the communications network with an avail inventory," as recited in independent claim 1. Despite Applicants numerous attempts to explain the subject matter of claim 1, including numerous written responses and a personal interview, the Examiner continues to misunderstand the claim language as well as misunderstanding the teachings of the prior art.

In the Examiner's Advisory Action, the fundamental misunderstanding is presented at the forefront of the rejection: "Regarding claims 1, 85-87, Hendricks teaches correlating available addressable units of a communication network with avails (advertising opportunities or slots) (see fig. 4, col. 4 line 54 to col. 5 lines 51)..." To begin with, the impreciseness of the Examiner's reference to Hendricks, exhibits the specious nature of the rejection.

Despite the extensive explanations to correct the Examiner's interpretation of Hendricks, the Examiner has refused to accept the clear and plain meaning of Hendricks' teachings. The Examiner cites "fig. 4" of Hendricks as "proof" of "correlating available addressable units of the communications network with an avail inventory..." Applicants are unclear on how Fig. 4 shows anything as alleged by the Examiner. Moreover, Fig. 4 of Hendricks seems entirely irrelevant to proving the specific teachings of Hendricks as they relate to claim 1.

Furthermore, the entire column cited by the Examiner (col. 4 line 54 to col. 5 lines 51) fails to disclose “correlating available addressable units of the communications network with an avail inventory.” Rather, this passage describes “managing the program and feeder channels,” determining “television terminal groups,” assigning groups to television terminals, and managing feeder channels. At best, this passage can be described as determining how to assign feeder channels for program breaks and assigning television terminals to groups. Simply put, it does not disclose “correlating available addressable units of the communications network with an avail inventory.”

The Examiner points out that Applicants’ specification discloses that “advertisement spots” are equated with “**avails**.” Therefore the Examiner contends that since Hendricks teaches selecting “*spots*” for “**program breaks**” Hendricks thus teaches “correlating available addressable units of the communications network with an avail inventory.”

Contrary to the Examiner’s methodology, the examination of a patent application is not simply an exercise in word matching. As is well established an applicant may be his own lexicographer. It is clear that when using the terms “**avails**,” “**advertisement spots**,” or “**time slots**,” Applicants are referring to the space in which advertisements are placed and not the *advertisements* themselves (see, for example, page 1, lines 19-25 and page 2, lines 2-4). As pointed out in the Response After Final, Hendricks describes “*advertisement spots*” as the *advertisements* themselves and not the **slots** into which the advertisements are placed. Hendricks teaches that, “once specific *spots* are selected for each **program break**...” (column 6, line 1) making it clear that, in the disclosure of Hendricks, *spots* are *ads* that are placed into **program breaks**. In contrast, in Applicants’ disclosure, **avails** are where *advertisements* are placed. Therefore, the matching of “*advertisement spot*” in Hendricks to “**advertisement spots**” in Applicants’ disclosure and claimed invention is immaterial in light of the clearly denoted meanings in the respective disclosure and/or claims.

Independent claim 1 recites:

A computer-implemented method for managing avail inventory data of media programming streams for a communications network, the method comprising the steps of:

correlating available addressable units of the communications network with an avail inventory; and

generating a proposed price for purchase of at least one avail based on results of the correlating step.

Hendricks does not disclose “correlating available addressable units of the communications network with an avail inventory.” Hendricks does not teach comparing an inventory of avails to the available addressable units. At best, Hendricks teaches matching advertisements with television terminals. This is not the same as correlating an available ad slot (avail) with an addressable unit.

Furthermore, Hendricks does not disclose the generation of a proposed price for purchase of at least one avail based on correlation of an avail inventory and available addressable units. As recited in claim 1, the proposed price is based on the correlating of avails and addressable units (see page 16-18 of the Amendment). For at least these reasons, and in view of the foregoing discussion with respect to the difference between an **avail** and a *spot*, independent claim 1 is believed to be patentable over Hendricks.

Applicants requested that the Examiner specifically address dependent claims 85, 86, and 113 (see Response After Final, page 19). In the Advisory Action on page 4, the Examiner has done so; however, Applicants respectfully submit that in so doing the Examiner mistakes the teaching of Hendricks. Applicants contend that the cited teaching of Hendricks cannot be said to teach allowing a user to select at least one **avail** for purchase as recited in claim 85 (and similar to as recited in claim 86 and 113). In Hendricks, advertisers do not select **avails**, but only indicate that they want their *advertisement* displayed.

In rejecting independent claim 88, the Examiner again refuses to acknowledge that Hendricks is concerned with matching *ads* to television terminals in order to target ads, whereas claim 88 recites obtaining **avails** corresponding to addressable units. The Examiner cites column 31, lines 1-6 of Hendricks as teaching “receiving a market segment selection from a user.” However, this section of Hendricks does not indicate “receiving a market segment selection from a user” as recited in claim 88. Instead this section of Hendricks describes how advertisers indicate to whom their *advertisements* are targeted. The advertisers cannot affirmatively indicate a market segment. In Hendricks, the advertisers in Hendricks can only indicate the market segment to which their ad is oriented. Then, the system of Hendricks performs matching of ads with television terminals in an automated fashion, without user input. Ultimately, the user is not allowed to provide a market segment selection as recited in claim 88. Therefore, Hendricks does not teach this aspect of claim 88.

Furthermore, Hendricks does not obtain an inventory of avails corresponding to segment specific addressable units. Hendricks never produces, obtains, or retrieves an inventory of **avails**. It is unclear what portion of Hendricks the Examiner recites in order to teach this aspect of claim 88. It is equally

unclear how any of the cited portions can teach this aspect of claim 88. Applicants assume the Examiner is referring to the functions of the “break management engine” and the “*spot* placement engine” in Hendricks. However, neither of these engines obtains an inventory of **avails** corresponding to segment specific addressable units. See the Response After Final, page 20-21 for further analysis of this issue.

Furthermore, when many of the dependent claims of claim 88 are analyzed, it is even clearer that Applicants’ claims are distinct from Hendricks. For instance, dependent claim 95 recites that, “a user selects at least one avail for purchase in said inventory of avails.” No such selection process is described in Hendricks. In Hendricks, the advertiser simply submits ads to be scheduled by the above identified “break management engine” and the “spot placement engine”. The advertiser is not permitted or able to select “at least one **avail** for purchased in said inventory of avails,” since selecting requires making a choice or an act of picking out. This deficiency is especially noticeable since Hendricks does not even create an inventory of avails from which to select avails.

With respect to dependent claim 99, Hendricks’ disclosure of different rates to different advertisers or staying within an advertiser’s budget, surely cannot be inferred to teach basing the price of avails on the market segment selection (“said proposed price is dependent on said market segment selection” as recited in claim 99). Applicants note that the market segment selection causes the selecting of specific addressable units and the avails associated with those units.

With respect to independent claim 101, Applicants note that the Examiner fails to address aspect (a), which recites, “receiving a programming selection from a user.” Hendricks does not receive a programming selection from a user and then obtain a listing of addressable units available to the user for the avails corresponding to the programming selection. For this reason and the reasons discussed above regarding the patentability of independent claim 1, independent claim 101 is believed to be patentable.

With respect to claim 104, Applicants note that Hendricks does not disclose that the “price for said avails is dependent on whether the addressable unit corresponding to an avail is within said market segment.” Similar to dependent claim 99, Hendricks’ disclosure of different rates to different advertisers or staying within an advertiser’s budget, surely cannot be inferred to teach basing the price of avails on whether an addressable unit is in a market segment. Therefore, Applicants believe that claim 104 offers additional patentable distinctions over Hendricks.

With respect to independent claim 105, the Examiner seemingly ignores that the claim recites, “receiving a correlation selection from a user, wherein said correlation selection indicates the preference

of said user to be presented with avails that correspond to said correlation selection.” Nowhere in Hendricks can the user enter a correlation selection representative of the desire of the user to be presented with corresponding avails and have a proposed price generated for those **avails**. Hendricks allows an advertiser to indicate targeting criteria for his *advertisement*, but not to indicate a correlation selection and be presented with corresponding **avails** (yet again noting that **avails** and *advertisements* are distinct). For this and the reasons discussed above, independent claim 105 is believed to be patentable over Hendricks.

Dependent claim 106 recites that the user may actuate the purchase of an **avail**. In Hendricks, the user may only submit his *advertisement* for targeting and display, but there is no mechanism for affirmatively purchasing an **avail**. Therefore, dependent claim 106 is believed to be patentable.

Dependent claims 2-21, 85-87, 89-100, 102-104, and 106-113 are believed to be allowable at least by their dependency on independent claims 1, 88, 101, and 105, respectively. Reconsideration and withdrawal of the Examiner’s rejection of claims 1-4, 6-13, 16-21, and 85-113 are respectfully requested.

The Examiner has rejected claims 5, 14, and 15 under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of U.S. Patent No. 6,424,998 to Hunter (“Hunter”). Applicants respectfully traverse this rejection.

As discussed above with respect to independent claims 1, 88, 101, and 105, Hendricks does not disclose all of the features of the independent claims. Hunter does not teach or suggest the element(s) missing from Hendricks. Therefore, even if the combination of Hendricks and Hunter is proper, such combination does not teach or suggest all of the features of independent claims 1, 88, 101, or 105. Accordingly, Applicants respectfully submit that independent claims 1, 88, 101, and 105 are allowable over the combination of Hendricks and Hunter.

Dependent claims 5, 14, 15, 89-100, 102-104, and 106-113 are allowable at least by their dependency on independent claims 1, 88, 101, and 105, respectively. Reconsideration and withdrawal of the Examiner’s rejection of claims 5, 14, and 15 are respectfully requested.

Applicant respectfully submits that the Examiner’s rejections have been previously overcome, and that the application, including claims 1-21 and 85-113, is in condition for allowance. Reconsideration and withdrawal of the Examiner’s rejections and a Notice of Allowance are respectfully requested.